

Idaho Clean Indoor Air Law

Idaho Department of Health and Welfare Rules Writing Process

Frequently Asked Questions

Introduction

Senate Bill 1283 was signed into law on April 2, 2004 prohibiting smoking in public places and at public meetings. The Department of Health and Welfare was assigned the responsibility to develop rules that implement the statute following the administrative process and timeline.

The Department is seeking advice and input from parties involved in the development of the Senate Bill and those directly affected by it. Stakeholders participating in the rule-making process include: legislators, law enforcement, the Department of Labor, restaurant and bar owners, the Restaurant and Lodging Association, the Retailers Association, public health officials, legal representatives, commercial real estate representatives, the Idaho Academy of Family Physicians, the Coalition for Healthy Idaho, the Tobacco Free Idaho Alliance, the American Lung Association, the American Cancer Society, and the American Heart Association.

Many Idahoans and Idaho business owners have inquired as to how to interpret the statute. Restaurant and bar owners have questioned how the passing of the statute will affect their businesses and what they have to do to comply. This document addresses a variety of questions the Department of Health and Welfare has received about the Senate Bill and the rule-writing process.

FAQs

Q. What is Senate Bill 1283?

A. On April 2, 2004, the Governor of the State of Idaho signed Senate Bill 1283 (www3.state.id.us/oasis/S1283.html) into law that prohibits smoking in public places and at public meetings. The intent of the bill is to protect public health, personal comfort and environment, the health of employees who work at public places and the rights of nonsmokers to breathe clean air.

Q. When does the new law go into effect and when do I need to comply?

A. The law goes into effect on July 1, 2004 and is enforceable from that point forward.

Q. Why is this new law important?

A. Health officials have concluded that secondhand tobacco smoke causes or contributes to a multitude of diseases, including lung cancer and heart disease in nonsmoking adults, as well as serious conditions in children such as asthma, respiratory infections, and middle ear infections. Some studies have linked secondhand smoke with an increased risk of sudden infant death syndrome. In addition, public health officials have concluded that secondhand smoke can exacerbate adult asthma and allergies and cause eye, throat and nasal irritation.

Q. Who does this new law affect?

A. The new law affects almost everyone: smokers, business owners, patrons of businesses, policy makers, etc. Senate Bill 1283 prohibits smoking in public places and at public meetings in indoor environments.

Q. What does it mean to businesses?

A. The following are a few examples of businesses impacted by the new law. This list is not inclusive of all establishments that are impacted or circumstances that may be encountered when complying with the new law. This list is intended to provide examples only. Complete definitions governing indoor smoking can be found in Senate Bill 1283 and the draft rules.

- **Restaurant** - restaurants are no longer allowed to permit smoking inside.
- **Bar** - a bar can allow smoking if the service of food is low risk, non-potentially hazardous food (not licensed as a restaurant), **or** no person under the age of twenty-one (21) years is permitted.
- **Bar Within a Restaurant** - a restaurant that has a bar within it falls under the definition of a restaurant and cannot allow smoking. However, there are options being proposed in the draft rules to address some circumstances where a bar is within a restaurant. Some establishments that contain a bar within a restaurant may:
 - 1) physically isolate the bar area from the restaurant with a solid floor to ceiling wall, have a separate outside public entrance that is not shared with the restaurant, not have any windows or doorways connecting it to the restaurant where the public has access, and not allow secondhand smoke from the bar to impact the restaurant area; or
 - 2) designate themselves as a completely non-smoking establishment; or
 - 3) designate themselves as smoking as long as they comply with the definition of a bar (found above); or
 - 4) may have posted hours as a non-smoking restaurant and hours as a smoking bar as long as they comply with the definition of a bar.
- **Golf Courses** - golf courses have to comply with the new law if they are a semi-private or public. Golf course restaurants and retail stores within the golf course will have to be non-smoking. Bars can allow smoking if they comply with the definition of a bar. However, as stated in the bar within the restaurant definition, golf course owners have several options in complying. Golf courses that contain a bar within a restaurant have the same options as a bar within a restaurant as stated above.
- **Hospitals** - Senate Bill 1283 lists hospitals under the definition of public place and places a twenty (20) foot non-smoking restriction at the public entrances and exits to the facilities.
- **Daycares/Childcare Facilities** - Smoking is not permitted in licensed daycares and childcare facilities, including facilities operated out of private homes during the hours children are present.
- **Stores** - Senate Bill 1283 lists retail and grocery stores under the definition of public place.
- **Schools** - Senate Bill 1283 lists schools (private, public, elementary, secondary and educational facilities - including dormitories) under the definition of public place and places a twenty (20) foot non-smoking restriction at all of the entrances and exits of such buildings or facilities.
- **Patios** - patios are not considered under the definition of an enclosed indoor place of business, therefore, establishment owners can designate the smoking status of their patios.
- **Nursing Homes** - Senate Bill 1283 states that common areas of nursing homes, including lobbies, hallways, and other designated dining areas and restrooms fall under the definition of public place where smoking is not allowed. A business owner or other person in charge may designate private guest rooms as smoking or non-smoking.
- **Hotels/Motels** - Senate Bill 1283 states that common areas of hotels/motels, including lobbies, hallways, restaurants, and other designated dining areas and restrooms fall under the definition of public place where smoking is not allowed. A business owner or other person in charge may designate private guest rooms as smoking or non-smoking.
- **Bowling Alleys/Centers** - defined in the draft rules as a place of business with at least two bowling lanes on its premises and is operated for public entertainment, can allow smoking.
- **Social, Fraternal, Religious Organizations** - Senate Bill 1283 states that smoking is permitted in buildings owned and operated by such organizations.

Q. What if my business is not in compliance?

A. Penalties associated with violations of the new law are stated in the Senate Bill. A business owner who violates the provisions of the law commits an infraction and is subject to a fine not to exceed \$100. Such an infraction may be reported to law enforcement.

Q. Who do I call if I have a customer in my establishment who refuses to stop smoking when I ask?

A. An employer or other person in charge of a public place or public-owned building, or his employee or agent, who observes a person smoking in apparent violation of the Idaho Clean Indoor Act must ask the person to extinguish all lighted tobacco products. If the patron refuses to comply by extinguishing the lighted tobacco product or leaving the premises, the employer may call local law enforcement. The patron is guilty of an infraction and is subject to a fine not to exceed \$50.

Q. Who will enforce this new law?

A. Local law enforcement will enforce the new law.

Q. What is the process that is being undertaken to develop rules?

A. The Idaho Department of Health and Welfare is responsible for writing rules to implement the law. The development of rules follows a formal process to collect stakeholder and public comment. This process will take approximately one year. During the interim, the statute will be enforced by law enforcement. If an enforcement case needs to be prosecuted, local prosecutors will handle the case. The development of rules will ensure coordination between agencies.

- In April 2004, the Department drafted preliminary rule language to be reviewed by a small group of technical reviewers such as legal representatives, law enforcement, the Department of Labor, legislators intimately involved in the development of the senate bill, and representatives of the restaurant and lodging industries.
- This technical review produced draft rules in May 2004 for review and input from a larger advisory group of stakeholders.
- Final draft rules will be available for review by mid-June, 2004. The draft rules will be posted on the Department's web site for public access.
- The draft rules were published in the Idaho Administrative Bulletin, Vol. 04-8, August 4, 2004.
- The Department convened public hearings throughout the state August 9-23, 2004.
- The final proposed rules will be presented to the Board of Health and Welfare on November 4-5, 2004 for their information.
- All public comments received, the Board's recommendations, and the final proposed rules will be presented to the Director of Health and Welfare for his decision.
- The rules will then go to the 2005 Idaho Legislature for final approval and, if approved, will be effective when the Legislature adjourns in 2005. If they are rejected, no rules will be in place until the Department modifies the rules according to the same process outlined above.

Q. Will the public be able to give input into the rules?

A. Many stakeholders have already provided the Idaho Department of Health and Welfare with comments and input through an advisory group process. In addition, August 9 - 23, 2004, the Department convened public hearings on the final draft rules in Boise, Coeur d'Alene, Lewiston, Pocatello, Idaho Falls, and Twin Falls. A court reporter was present to transcribe the comments received. Comments made directly about Senate Bill 1283, rather than the rules, could not be considered.

Q. What happens during the next year when the rules are being approved but the law is in effect?

A. Until the rules go into effect Idahoans and Idaho business owners will have to interpret the law for themselves and determine how the law affects them.

Q. Who do I consult if I have questions about my business?

A. We encourage you to first read the law to see how it applies to your business. You may choose to review the draft rules recognizing that until they are approved by the legislature, they hold no weight in law and are only the Department's attempt to interpret the statute. Please go to <http://www.healthandwelfare.idaho.gov/Rainbow/Documents/health/smokingdrafrules.pdf> for the latest, official draft of the rules produced by the Idaho Department of Health and Welfare. You may want to seek legal counsel. You can also contact the association that represents your business interests, such as the Restaurant and Lodging Association, if you own a restaurant.

Q. Who do I call if I have questions about the draft rules?

A. If you have questions about the draft rules or the rule writing process, contact:

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